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No. 03-1618

Supreme Court, U.S.
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In The
Supreme Court of the United States

CATHOLIC CHARITIES OF SACRAMENTO, INC.,

Petitioner,

v.

CALIFORNIA, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of California

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTER STATEMENT OF QUESTIONS PRESENTED

California's Women's Contraceptive Equity Act requires providers of employer healthcare service plans and disability insurance plans to include coverage of FDA-approved contraceptives if the plan otherwise provides prescription drug coverage. This law does not apply to plans that are issued by insurers to "religious employers" as defined. The question presented is:

Does California's regulation of insurance providers violate the First Amendment because Catholic Charities of Sacramento, Inc., a non-profit public benefit corporation, would not come within the statute's "religious employer" exemption, if the corporation chooses to purchase a healthcare service plan that provides prescription drug coverage for its employees?

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STATEMENT

Petitioner Catholic Charities of Sacramento, Inc., seeks this Court's review of a decision of the California Supreme Court, which rejected petitioner's federal and state free exercise and establishment clause attacks against the Women's Contraceptive Equity Act (WCEA). The respondents, the State of California, the California Department of Managed Health Care, and the California Department of Insurance (State), respectfully request this Court to deny the petition.

A. The WCEA

In 1999, the California Legislature enacted landmark legislation to redress widespread discrimination against women employees in healthcare service plan coverage and in disability insurance policies. The WCEA[1] requires health care service plans and disability insurance policies that cover prescription drugs to include coverage for FDA-approved prescription contraceptives. Unless exempt, California employers who choose to offer their employees prescription drug coverage as part of a health or disability insurance plan must abide by the WCEA's contraceptive coverage mandates. However, the WCEA does not mandate employers to offer employees either health insurance, disability insurance, or prescription drug coverage.

The WCEA's legislative history demonstrates the long-standing discrimination against women employees nationwide in the exclusion of prescription contraceptive

[1] Cal. Stats. 1999, ch. 532, codified at Cal. Health & Safety Code § 1367.25 (West Supp. 2004); Cal. Stats. 1999, ch. 538, codified at Cal. Ins. Code § 10123.196 (West Supp. 2004).

coverage from their health benefit plans. Compelling, undisputed data establishes the adverse fiscal impact this form of discrimination has on women. Prescription contraceptives statistically are the most effective methods of birth control and are an essential part of women's healthcare during their reproductive years. 12 DA at A003337-A003342.[2] Nevertheless, prescription contraceptives are not included in 49 percent of health plan formularies, though most drugs approved by the Federal Drug Administration appear almost immediately on health plans. 3 DA at A000765. As a result, this exclusion is mainly responsible for women paying 63 to 68 percent higher out-of-pocket healthcare costs than men. 3 DA at A000764 and A000767; see also Pet. App. 89a.

The costs imposed on women by the historical health coverage exclusion for prescription contraceptive methods are not solely financial. The exclusion also directly threatens the health of California women. According to the American College of Obstetricians and Gynecologists, access to prescription contraceptives is a medical necessity for women due to the serious or even life-threatening consequences that can be caused by unintended pregnancies. 3 DA at A000846; see also Pet. App. 89a-90a.

B. The WCEA's Religious Employer Exemption

While the WCEA was pending before the California Legislature, the California Catholic Conference and the California Association of Catholic Hospitals approached the legislature and requested a "conscience clause" exemption

[2] Reference is to volume 12 of the Documentary Appendix that was before the state court of appeal and the California Supreme Court.

from the statute's requirements for Catholic employers. 3 DA at A000771. These organizations argued that the law would "force the Catholic Church to pay for a benefit that it believes is morally objectionable." 4 DA at A000887.

The California Legislature declined to enact as broad an exemption as the Catholic organizations demanded. The legislature realized that permitting non-profit corporations like Catholic Charities and the growing number of large hospitals and universities loosely affiliated with the Catholic Church to be exempt from the statute would deprive literally thousands of employees in California of access to nondiscriminatory health and disability insurance coverage. 5 DA at A001251-1252.[3]

Ultimately, the California Legislature did exempt religious employers from the WCEA. But the legislature defined the term "religious employer" more narrowly than petitioner would have preferred,[4] tracking a number of

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[3] Payroll data submitted by the California Association of Catholic Hospitals indicated that its member hospitals alone employ approximately 52,704 full-time positions. 5 DA at A001455.

[4] Cal. Health and Safety Code section 1367.25(b) provides:

> "Notwithstanding other provisions of this section, a religious employer may request a health care service plan contract without coverage for federal Food and Drug Administration approved contraceptive methods that are contrary to the religious employer's religious tenets. If so requested, a health care service plan contract shall be provided without coverage for contraceptive methods.
>
> (1) For purposes of this section, a "religious employer" is an entity for which each of the following is true:
>
> (A) The inculcation of religious values is the purpose of the entity.
>
> (B) The entity primarily employs persons who share the religious tenets of the entity.

(Continued on following page)

federal and state labor and tax code exemptions.[5] The legislative history of the WCEA shows that the California Legislature intentionally and rationally narrowed the statute's exemption in order to assure that the broadest possible segment of the California female workforce would benefit from the statute's anti-discrimination mandates, while still respecting the free exercise interests of church employers. 4 DA at A000915.

C. Petitioner's Corporate Status

While petitioner represents itself as an "organ of the Catholic Church" and as "'ecclesiastically part of the Catholic Church,'" Pet. 2-3, it is nevertheless a non-profit public benefit corporation organized under the laws of California. Petitioner is not the Roman Catholic Bishop of Sacramento. Instead, it exists as a separately incorporated and administered organization. 2 DA at A000383.[6] Petitioner's chosen

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(C) The entity serves primarily persons who share the religious tenets of the entity.

(D) The entity is a nonprofit organization as described in Section 6033(a)(2)(A) i or iii, of the Internal Revenue Code of 1986, as amended."

[5] The WCEA's "religious employer" exemption is similar to the religious employer exemption provisions contained in the North Carolina (N.C. Gen. Stat. § 58-3-178(e)(1)-(3) (2000)) and Hawaii (Haw. Rev. Stat. § 431:10A-116.7) (2000)) statutory schemes that mandate insurance coverage for contraception. Moreover, this exemption's scope is similar to certain provisions contained in federal law. For example, some provisions of the Federal Tax Code (26 U.S.C. § 6033(a)(2)(A)(i) and (iii) (West 2002)) exempt certain tax filings for "churches, their integrated auxiliaries, and conventions or associations of churches," and "the exclusively religious activities of any religious order."

[6] The Roman Catholic Bishop of Sacramento was not a party to the litigation, and there is no evidence that the WCEA burdens the free

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status as a secular, non-profit public benefit corporation allows petitioner to receive state funds and to enter into contracts with public agencies. 2 DA at A000384; see Cal. Const., art. XVI, § 5 (prohibiting grants of public funds "in aid of any religious sect, church, creed, or sectarian purpose").[7]

Petitioner does not qualify for the WCEA's religious employer exemption. Petitioner concedes that inculcation of religious values is not its purpose; that it does not primarily employ or service persons who share its religious tenets; and that it is not a non-profit religious organization within the provisions of Internal Revenue Code section 6033(a)(2)(A)(i) or (iii). 2 DA at A000387. In fact, most of petitioner's 183 employees are not Catholic, and the humanitarian services that it provides are offered without regard to the religious affiliation of the recipients. Pet. App. 92a.

D. The Proceedings Below

Petitioner filed a declaratory and injunctive relief action that challenged the constitutionality of the WCEA in the Superior Court of California, County of Sacramento. On September 28, 2000, the trial court denied petitioner's

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exercise of the Bishop's religion or interferes with the governance of the Diocese of Sacramento.

[7] California law alternatively permits incorporation as a non-profit religious corporation "primarily or exclusively for religious purposes." See Cal. Corp. Code § 9111 (West 1991). Such corporations, however, may be ineligible to receive grants of public funds. Cal. Const., art. XVI, § 5; see, *e.g.*, *Frohliger v. Richardson*, 63 Cal.App. 209, 214-217, 218 P. 497 (1923) (invalidating appropriation for restoration of San Diego Mission, title to which was held by the Archbishop of San Francisco).

motion for a preliminary injunction. Pet. App. 136a. The trial court held that petitioner failed to establish a reasonable probability of success on the merits that it would prevail on its constitutional claims. Pet. App. 137a-138a.

Following the trial court's denial of its motion for preliminary injunction, petitioner sought review by mandamus in the California Court of Appeal. In a unanimous opinion, the Court of Appeal denied Catholic Charities' petition. Pet. App. 87a-133a.

Petitioner sought review in the California Supreme Court. In a six-to-one opinion, the California Supreme Court affirmed the decisions of the lower courts. In its opinion, the court held that the WCEA does not unconstitutionally interfere with matters of internal church governance when it regulates employment relationships between a non-profit public benefit corporation and its employees. Pet. App. 8a-13a. Moreover, the court held that the WCEA's "religious employer" exemption does not violate the establishment clause because the exemption, in fact, constitutes a legislative accommodation of religious exercise that neither targets any religion nor involves the State in any excessive entanglement with religious beliefs. Pet. App. 13a-17a.[8]

The California Supreme Court also held that the WCEA does not violate the First Amendment's guarantee of free exercise of religion. In so holding, the court first

[8] Justice Kennard, concurring, observed that Catholic Charities' establishment clause claims are rendered moot by the organization's concession that it is not a religious entity exempt from federal taxation – a distinct requirement for exemption under the WCEA. See Pet. App. 50a-55a.

rejected petitioner's contention that the statute was subject to strict scrutiny notwithstanding this Court's decision in *Employment Div., Ore. Dept. of Human Res. v. Smith*, 494 U.S. 872 (1990). Pet App. 21a-35a. Petitioner had argued that (1) the WCEA was not a neutral statute of general application, (2) that the state legislature had "gerrymandered" the law to reach only Catholic employers, and (3) that *Smith* should not apply here because the WCEA violates so-called "hybrid" rights. The court rejected all of these contentions as unsupported in fact and law. Pet. App. 21a-35a.

Nevertheless, the state supreme court concluded that even if the WCEA were analyzed under this Court's pre-*Smith* strict scrutiny standard, see *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Thomas v. Review Board, Ind. Empl. Sec. Div.*, 450 U.S. 707 (1981), the statute would satisfy that standard. Pet. App. 40a-46a. The court applied the strict scrutiny standard for purposes of assessing whether the WCEA violated the California Constitution's free exercise guarantees. See Pet. App. 35a-40a. The court found that the WCEA serves the compelling state interest of eliminating gender discrimination in the provision of health benefits. Pet. App. 42a-46a. The court noted that "any exemption from the WCEA sacrifices the affected women's interest in receiving equitable treatment with respect to health benefits," Pet. App. 44a, and could find no case in which this Court had "exempted a religious objector from the operation of a neutral, generally applicable law, despite the recognition that the requested exemption would detrimentally affect the rights of third parties." *Id.* The court also found that no less restrictive alternatives are readily available because "[a]ny broader exemption increases the number of women affected by

discrimination in the provision of health care benefits." Pet. App. 45a.

Justice Brown, writing only for herself, dissented on the ground that *Smith* should be read to apply only to individuals and not to organizations. Pet. App. 59a-61a. Justice Brown concedes that the purpose underlying the WCEA is compelling, Pet. App. 57a, 73a, and she concedes that this Court's jurisprudence would likely support a conclusion that the WCEA serves a compelling state interest. Pet. App. 73a.[9] However, Justice Brown concludes that the statute is not "narrowly tailored" because (1) the scope of the religious employer exception could have been broader, Pet. App. 74a; (2) employers can avoid the anti-discrimination restrictions in health insurance policies by not purchasing health insurance plans for their employees, Pet. App. 74a-75a; and (3) notwithstanding the state legislature's determination, petitioner's female employees do not, in her view, constitute a sufficiently large part of the California workforce to justify equating their equal-employment interests under state law to petitioner's religious scruples, Pet. App. 71a n.5 and accompanying text ("[A]n exemption for Catholic Charities would seem to have a negligible effect."), Pet. App. 75a ("[T]he record provides no support for the claim that the exemption potentially affects several hundred thousand employees"); see also Pet. App. 79a ("The insurance gap itself is not

[9] It is undisputed in the record that women spend as much as 68% more than men for out-of-pocket health care costs, and that this is due in part to the costs associated with prescription contraceptives and unintended pregnancies. Pet. App. 42a-43a. According to various legislative staff reports, eliminating this economic inequality in health insurance coverage was the WCEA's "principal object." Pet. App. 43a.

large, and Catholic Church employers can constitute only a small percentage of that small percentage.")[10]

REASONS FOR DENYING THE PETITION

THE PETITION PRESENTS NO GROUNDS JUSTIFYING REVIEW BY THIS COURT

A. The Decision Below Affects Only California Non-Profit Public Benefit Corporations Organized for Secular Purposes; It Has No Application to Any Non-Profit Corporation That Is Organized as a Church or Otherwise Primarily for Religious Purposes.

Petitioner vaguely represents itself as an "organ of the Catholic Church" and as "'ecclesiastically part of the Catholic Church.'" Pet. 2-3. Nevertheless, petitioner is a corporation which chose to organize itself under California law, not as a non-profit religious corporation, 2 DA at A000383, but rather as a non-profit "public benefit corporation," see Cal. Corp. Code § 9111 (West 1991). As noted above, petitioner's secular corporate status enables the corporation to receive public funding and to enter into contracts with public agencies. See Cal. Const., art. XVI, § 5. Furthermore, petitioner concedes that it is not exempt from federal taxation as a "church[], [an] integrated auxiliary [of a church], [or a] convention[] or association[] of [a] church[]" under 26 U.S.C. § 6033(a)(2)(A)(i). Pet. App. 6a.

[10] Justice Brown did not indicate her acceptance of petitioner's claims of interference with "hybrid rights," interference with "religious autonomy," or "compulsory subsidization." These claims of petitioner, accordingly, enjoyed no support at all from the court below.

Petitioner's exemption under 26 U.S.C. § 6033(a)(2)(A)(i) would not, standing alone, suffice to qualify petitioner for an exemption as a "religious employer" under the WCEA. See n.4. But neither does the decision below purport to decide whether the WCEA would violate the First Amendment rights of an organization that, unlike petitioner here, was organized as a non-profit religious corporation under California law or that did qualify as a church, an integrated auxiliary of a church, or a convention or association of a church under 26 U.S.C. § 6033(a)(2)(A)(i). Pet. App. 17a; see also Pet. App. 54a-55a (Kennard, J., concurring).

Indeed, the decision below does not purport to determine the free exercise rights of an organization that satisfies any one, but not all, of the criteria for an exemption under the WCEA. For example, a closer question might be presented by a corporate employer that claims no federal tax exemption as a church or church affiliate, but alleges, nevertheless, that the inculcation of religious values is its organizational purpose. See Cal. Health & Safety Code § 1367.25(b)(1)(A) (West Supp. 2004). And a closer question might be presented by a case involving a dispute whether the persons primarily served by the employer share the religious tenets of the entity. See Cal. Health & Safety Code § 1367.25(b)(1)(C) (West Supp. 2004). But no such questions arise in the context of this case.[11] Here, petitioner readily concedes that inculcation of religious values is not its purpose and, indeed, petitioner

[11] Petitioner complains that the WCEA's definition of a religious employer "invites intrusive and subtly coercive scrutiny that is itself offensive to the First Amendment." Pet. App. 27. But petitioner *conceded* that it is not a religious employer within the meaning of the statute. The objection is, thus, hypothetical at best.

distinguished its purpose from that of inculcation of religious values: "*Rather*, [petitioner's] purpose . . . is to offer social services to the general public . . . , to reduce the causes and results of poverty, and to build healthy communities through social service programs . . . " Pet. App. 6a (italics added).[12]

The decision below is, on its face, limited in its impact to corporate employers that, like petitioner here, prefer to claim state and federal tax exemptions as secular charities or "public benefit" corporations, rather than as religious institutions – in part, at least, so that they will be eligible for receipt of taxpayer monies. While respondents do not contend that such secular non-profit corporations are wholly without free exercise protections, respondents do contend that, to the extent that the decision below affects only such entities, the decision does not warrant this Court's review.

B. The Petition Does Not Otherwise Present Any Basis for this Court's Review.

1. Petitioner's request for guidance concerning the application of *Smith* raises essentially a moot point.

Petitioner asserts that this Court needs to "clarify the meaning and scope" of its decision in *Employment Division v. Smith*, 494 U.S. 872 (1990) (*Smith*). Pet. 8-9. But petitioner raises what is, for all intents and purposes, a moot point. The state supreme court expressly concluded that,

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[12] Petitioner's stated purpose is similar to the stated purpose of the American Red Cross. See http://www.redcross.org/more/commserv (setting forth that organization's community services).

even if *Smith* did not govern, and even if this Court's pre-*Smith* strict scrutiny standard were applicable, the WCEA would satisfy that standard. Pet. App. 40a-46a.

There is, accordingly, no need to clarify whether the Court's pre-*Smith* strict scrutiny standard should apply; it was applied.

2. Petitioner's assertion that the WCEA is not a "law of general applicability" is patently without merit.

Petitioner seeks this Court's "guidance" about whether the WCEA is a "law of general applicability" within the meaning of *Smith*. Pet. 11. But petitioner does not – cannot – dispute that the WCEA applies to all providers of employee health insurance plans that include prescription medication coverage.

Instead, petitioner's asserted need for "guidance" rests on the fact that the statute does not require employers to purchase prescription coverage in their employee health insurance plans and because the statute exempts "religious employers." Pet. 11-12. This asserted basis for certiorari is manifestly specious.

3. Petitioner's asserted claim of interference with associational rights was not raised or considered by the court below.

Petitioner asserts that the WCEA interferes with the First Amendment associational rights of its supporters and contributors. See Pet. 12-13. But petitioner did not allege interference with any associational rights in the proceedings below, and, accordingly, the state supreme

court did not address the issue. See Pet. App. 32a ("The other rights violated, Catholic Charities asserts, are those protected by the free speech and establishment clauses of the First Amendment"); see also, Pet. App. 111a-112a (asserted "hybrid rights" relate to free speech and establishment clause). This Court will not entertain claims that were not raised and determined in the courts below. 28 U.S.C. § 1257(a) (West 1993) (challenge to validity of state statute must have been "drawn in question"); see also *Cardinale, Jr., v. Louisiana*, 394 U.S. 437, 439 (1969).

4. Petitioner's asserted claim of interference with speech is unsupported by the evidence.

To the extent that petitioner claims that the WCEA interferes with petitioner's speech, Pet. 15-16, the court below noted that this claim was unsupported by any evidence. The court declined to accept petitioner's argument that compliance with the law amounts to "speech":

> Catholic Charities' compliance with a law regulating health care benefits is not speech. The law leaves Catholic Charities free to express its disapproval of prescription contraceptives and to encourage its employees not to use them. For purposes of the free speech clause, simple obedience to a law that does not require one to convey a verbal or symbolic message cannot reasonably be seen [as] a statement of support for the law or its purpose. Such a rule would, in effect, permit each individual to choose which laws he would obey merely by declaring his agreement or opposition.

Pet. App. 34a-35a (citation omitted); see also Pet. App. 113a.[13]

5. Petitioner's assertion that the WCEA interferes with the institutional autonomy of the church is manifestly unsupported in fact and law.

Petitioner seeks review because the WCEA interferes with "the institutional autonomy of the Church." Pet. 17. The contention was properly rejected by the court below. Assuming for purposes of analysis that petitioner would qualify as a "church" under this Court's "religious autonomy" jurisprudence, the state supreme court carefully analyzed the issue and concluded that petitioner had shown no interference with religious autonomy. Pet. App. 8a-13a.

But, perhaps more relevant for purposes of assessing the need for this Court's review of that analysis, petitioner has shown nothing in this Court's jurisprudence, or in the decisions of any Court of Appeals, that would support its claim to being "a church" or "the Church" for purposes of "religious autonomy" analysis in any event. As noted above, petitioner has deliberately chosen to organize itself under California law as a secular non-profit public benefit corporation rather than as a non-profit religious corporation. See Cal. Corp. Code § 9111 (West 1991). Petitioner concedes that it is not exempt from federal taxation as a church, an integrated auxiliary of a church, or a convention or association of a church under 26 U.S.C.

[13] On this point, the Justices below appear to be unanimous. See note 10, supra.

§ 6033(a)(2)(A)(i). Pet. App. 6a. Further, petitioner is not the Bishop of the Diocese of Sacramento. See Pet. 3 (petitioner is "separately incorporated and a distinct civil entity."). The Bishop was not a party to this litigation, and no evidence exists in the record to establish that the WCEA interferes with the Bishop's institutional autonomy. Accordingly, this asserted basis for petitioning this Court likewise fails for manifest lack of merit.

6. Petitioner's "compulsory subsidization" claim is patently specious.

Petitioner claims that the WCEA impermissibly forces it to subsidize non-governmental conduct that is contrary to the "church's moral code." Pet. 19. This is a variation of petitioner's free speech and free association claims; it is factually unsupported and manifestly without merit.

Petitioner necessarily concedes that, like all other employers, petitioner is *not* required by the WCEA to purchase prescription medication coverage in the health benefit plans it provides for its employees. See e.g., Pet. 11 (noting that the act permits employers to deny prescription drug coverage altogether); see also Pet. App. 2a ("The WCEA does not require any employer to offer coverage for prescription drugs."); Pet. App. 75a (Brown, J., dissenting) (recognizing the employers can self-insure rather than purchase healthcare benefit plans).

To the extent that petitioner is "compelled" at all to purchase prescription medication coverage in its employee health plans, that compulsion is solely a result of petitioner's own *corporate*, if religiously motivated, business choices. It cannot reasonably be said to result from any *statutory* mandate.

7. Petitioner's claim that the WCEA defines the limits of petitioner's religious expression exaggerates the true facts.

Petitioner asserts a need for "clarification" of the State's power "to judge whether a church entity is sufficiently religious to exercise its religion freely." Pet. 24. But it is evident that no such "clarification" is required, for the simple reason that the State has nowhere purported to decide whether petitioner is "sufficiently religious to exercise its religion freely." *Id.*

The California Legislature has endeavored to alleviate a burden on the free exercise of religion consistent with meeting the legitimate state purpose of maximizing the number of women protected by the statutes' anti-discrimination provisions. Such permissible legislative balances, see *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos,* 483 U.S. 327, 334-335 (1987) (Government efforts to accommodate religion are permissible when they remove burdens on the free exercise of religion), will exclude some entities whose operations are motivated in whole or in part by religious belief while including others. See *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 784-785 (1981) (concluding that Congress intended to exempt from unemployment tax obligation employees of a parochial school that had no separate legal existence from the church); *cf. Lutheran Social Service of Minnesota v. United States,* 758 F.2d 1283, 1287 (8th Cir. 1985) (social service agency was not a church within meaning of 26 U.S.C. § 6033(a)(2)(A)(i) and, hence, it was not entitled to exemption from tax-filing requirement on that ground).

Petitioner's exclusion from the "religious employer" exemption of the WCEA is a function of, among other things, petitioner's choice not to seek exemption as a religious institution under federal tax laws, 26 U.S.C. § 6033(a)(2)(A)(i) or (iii). It is manifestly not a statement about the "sufficiency" of petitioner's religiosity. *Cf. Equal Employment Opportunity Comm'n v. Townley Engineering Mfg. Co.*, 859 F.2d 610, 619 (9th Cir. 1988), cert. denied, 489 U.S. 1077 (1988) ("We do not question the sincerity of the religious beliefs of the owners of Townley. Nor do we question that they regard the conduct of their company as subject to a compact with God. We merely hold that the beliefs of the owners and operators of a corporation are simply not enough in themselves to make the corporation 'religious' within the meaning of section 702 [of Title VII].").

8. No split among circuit or state supreme courts exists to justify this Court's intervention.

Many states, including New York, New Jersey, Maryland, Massachusetts, Virginia, and Texas, have adopted anti-discrimination statutes that are similar to the WCEA. 4 DA at A000946-A000947. Petitioner acknowledges that such statutes exist across the country. Pet. 9. The California Supreme Court is the only state high court to address the constitutional claims to date, however, a virtually identical matter is currently pending in the New York appellate courts. *Catholic Charities of the Diocese of Albany, et al. v. Serio*, Supreme Court, Albany County (Index No. 8229-02).

Given that the California Supreme Court's ruling presently affects only secular corporations that receive

government funding and decline even to claim exemption as religious institutions under state or federal tax laws, and given the current absence of conflicting analyses among state or federal courts concerning the constitutional claims advanced by petitioner, this Court's involvement is presently unwarranted.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: August 3, 2004

Respectfully submitted,

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